IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.342 OF 2003

Arun Kumar Shah,)
29/V, Shiv Krishna Daw Lane,)
P.O.Kankurgachi,Calcutta 700054.) ... Appellant

Versus

1. Ameet J. Shah,)
Adult, Indian Inhabitant,)
R/at 7, Ashutosh, Cross Road)
No.4, Liberty Garden,)
Malad (W), Mumbai 400 064.)

2. M/s.JDP Shares & Finance Pvt)
Ltd., having its office at)
22, Rajbahadur Building,)
3rd Floor, Mumbai Samachar)
Marg, Mumbai 400 023.)

3. Tata Iron & Steel Co. Ltd)
through M/s.Tata Share)
Registry Ltd., Registering)
and transferring Agent,)
having their Office at Army)
& Navy Building, 148, Mahatma)
Gandhi Road, Fort,)
Mumbai 400 001.) ... Respondents

Shri R.V.Singh for the Appellant.
Shri S.R.Shetty for the Respondent Nos.1 and 2 (absent).

CORAM : ABHAY S.OKA, J.

DATED : FEBRUARY 12, 2007.

JUDGMENT:

1. On 23rd July, 2003 notice was issued for final disposal of the Appeal at the admission stage. Heard Advocate for the Appellant. None appears for the first and second Respondent. Office noting shows that the

third Respondent is served. The first and second Respondents filed a suit against the Appellant and the third Respondent for declaration and injunction as regards certain shares. Decree has been passed in the said suit on 11th January, 1999 under Order 8 Rule 5 of the Code of Civil Procedure, 1908 on account of failure of the Appellant to file written statement.

2. The learned Advocate for the Appellant invited my attention to the roznama of the suit and pointed out that there was hardly any opportunity for the Appellant to file written statement. He submitted that decree has been hurriedly passed without giving enough opportunity to the Appellant to file written statement.

3. I have considered the submissions. I have also perused the copy of the roznama annexed to the memorandum of the Appeal. The roznama recorded on 03rd May, 1999 shows that the affidavit of service of writ of summons and the notice of motion was filed on that day by the Respondent Nos.1 and 2. On the next date i.e. 22nd June, 1999 the board was discharged for want of time. The suit was adjourned to 22nd July, 1999. On 22nd July, 1999, the trial Court passed an order directing that the suit should proceed ex-parte as the

Defendants were absent. On 11th August, 1999, an affidavit of evidence was tendered by the Respondent Nos.1 and 2. The Decree was passed on the very day.

4. One of the contentions of the Appellant in this Appeal is that there was no proper service of writ of summons. Apart from the said contention, in my view, an opportunity deserves to be granted to the Appellant to contest the suit on merits subject to payment of costs to the Respondent Nos.1 and 2. A time bound schedule has to be fixed for the disposal of the suit considering the fact that the suit is of the year 1998

5. Hence, I pass the following order:

(i) The impugned Judgment and Decree is quashed and set aside and S.C.Suit No.3276 of 1998 is restored to the file.

(ii) The Notice of Motion filed by the original Plaintiffs in the said suit is also restored.

(iii) The parties are directed to appear before the trial Court on 26th March, 2007 at 11.00 a.m. On that day the Appellant will file the written

statement.

(iv) No further time will be granted to the Appellant.

(v) The Appellant will pay costs of Rs.5,000/- to the first and second Respondents within a period of four weeks from today. The Appellant will not be permitted to file written statement unless the amount of costs is paid or deposited.

(vi) Ad-interim order passed by this court on 23rd July, 2003 in Civil Application No.2173 of 2000 will continue to operate till the trial Court decides the Notice of Motion filed by the first and second Respondents. The Notice of Motion shall be disposed of as expeditiously as possible and preferably on or before 30th June, 2007.

(vii) Hearing of the suit is expedited.

(viii) The Appeal is partly allowed in above terms.

(ix) Writ to be sent immediately.

Judge.